



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,007	08/07/2001	Lantz S. Crawley	3031/OJ066	1941

7590 03/03/2003
DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 03/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SK

Office Action Summary	Application No. 09/924,007	Applicant(s) CRAWLEY ET AL.	
	Examiner Kimberly S Smith	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 12/26/02 have been fully considered but they are not persuasive. The applicant's statement that "*there is no teaching or suggestion in Flashinski et al. that the value of one of the claimed material properties defined by the value of the other in order to satisfy a prescribed criterion*" is not found persuasive. Flashinski et al. at column 2, lines 18-20 states that "the pouch is formed by folding a strip of polymeric film upon itself". It is therefore noted that the deflection in bending is a prescribed criterion of the invention as it must be capable of folding. Deflection in bending is proportional to $1/EI$ (wherein E = the flexural modulus and I = the moment of inertia), and I is proportional to t^3 (where t = thickness), thus it is inherent that one of the thickness and the flexural modulus are defined by the other so as to satisfy the deflection in bending required by Flashinski to enable the device to be capable of folding.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not positively state a range of material thickness that is bounded at the upper end to 5 mils.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-3, 5-7, 9-11 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Flashinski et al, US Patent 6,360,477 B1 (Flashinski).

Flashinski discloses a disposable insect control member comprising a substrate (12) having a thickness and flexural modulus and an insect-interactive material (14) supported on the substrate wherein the value of the flexural modulus and the thickness are defined by the value of the other in order to satisfy a prescribed criterion (i.e. the flexibility of the substrate).

Regarding claims 2 and 3, the invention disclosed by Flashinski is comprised of a substrate having a thickness and a flexural modulus (as all materials inherently have). Given that a material with given properties was chosen for use with the invention and that the thickness and flexural modulus are inherent in a given material, it is therefore disclosed that the material was chosen based on a prescribed criterion between the thickness and the flexural modulus.

Regarding claim 5, Flashinski discloses the material for the substrate being comprised of polyester, polyvinyl chloride and polyethylene.

Regarding claim 6, Flashinski discloses a thickness that satisfies a prescribed criterion that is defined by the material selected for the substrate.

Regarding claim 7, Flashinski discloses the substrate being a predetermined polymer wherein the predetermined polymer has a range of thickness that satisfy the prescribed criterion.

Regarding claim 9, Flashinski discloses the substrate including a front surface that defines a central insect-interactive zone and a peripheral sealing zone (i.e. 36 and 38) that surrounds the insect-interactive zone wherein the insect interactive material is within the insect interactive zone.

Regarding claim 10, Flashinski discloses the substrate further including a generally central folding axis (seen in the figures).

Regarding claim 11, Flashinski discloses a sealing material located within the sealing zone, the sealing material being adapted to selectively seal and protect the insect interactive material when the substrate is in the stowed position (column 6, lines 46-52).

Regarding claim 15, Flashinski discloses a first fastener on one side and a second fastener on the opposite side of the folding axis (24, 24) so that connection of the first and second fasteners will maintain the insect control member in a useable position.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Stout et al., US Patent 4,411,093 (Stout).

Stout discloses a disposable insect control member comprising a substrate having a thickness and a flexural modulus and an insect-interactive material supported on the substrate.

Regarding claim 12, Stout discloses the insect-interactive material being sticky and adapted to adhere a contacting insect to the substrate.

Regarding claim 13, Stout discloses the insect-interactive material comprising an oil-based composition that is adapted to adhere to a contacting insect and be carried off by the insect (based upon the amount of tackifier used).

Regarding claim 14, Stout discloses the insect-interactive material comprising mineral oil.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 4 and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flashinski et al.

Flashinski discloses the invention substantially as claimed as applied in the above arguments and further in the disclosure of the substrate being comprised of polyethylene (column 5, line 47). However Flashinski does not positively state that the thickness of the substrate is at least about .5 mils or has a range of material thickness bounded at the upper end to 5 mils. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thickness of substrate of at least about 0.5 mils and bounded at the upper end of a range to 5 mils, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flashinski as applied to claim 7 in further view of Greenberg, US Patent 4,202,129.

Flashinski discloses the invention substantially as claimed. However, Flashinski does not disclose the polymer being an unfilled homopolymer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use an unfilled homopolymer as the polymer disclosed by Flashinski, since it has been held to be within the general skill of a worker in the art to select a known material (reference Greenberg) on the basis of its suitability for the intended use as a matter of obvious design choice.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3644

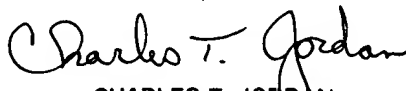
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

kss
February 27, 2003


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600